

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

March 29, 2011

Wid-Donald Paul
York County Prison
3400 Concord Road
York, PA 17402

RE: ***State of Delaware v. Wid-Donald Paul***
ID No. 0905014074

Dear Mr. Paul:

I have received your Motion for Postconviction Relief, filed pursuant to Criminal Rule 61. You seek an evidentiary hearing and appointment of counsel to assist you in withdrawing your guilty plea. I have also received defense counsel's affidavit, the State's response and your reply. Based on these submissions, as well as the record of the proceedings, your motion is denied.

You entered a guilty plea to one count of Possession with the Intent to Deliver Cocaine on May 5, 2010. I accepted your plea and sentenced you to eight years at Level 5 suspended after 18 months for probation. The State entered a *nolle prosequi* on the remaining charges, including the lead charge of Trafficking in Cocaine. You argue that you took the plea because of the ineffective representation of defense counsel.

On a motion to withdraw a guilty plea after sentencing based on ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that, but for counsel's deficiencies, the defendant would not have pled guilty but instead would have insisted on going to trial.¹

¹*Jamison v. State*, 825 A.2d 238 (Del. 2003).

You argue first that counsel was ineffective for failing to file a motion to suppress based on lack of probable cause for the traffic stop and your subsequent arrest. The record shows that your attorney filed such a motion on April 13, 2010. The Criminal Office Judge approved the motion to be heard at final case review. Your signed Affidavit in support of the suppression motion was submitted on April 28, 2010.

At final case review on May 5, 2010, you entered an advantageous guilty plea instead of going to trial. Your attorney negotiated the State's original plea offer from Trafficking in Cocaine 10g–50g down to Possession with Intent to Deliver Cocaine, as well as entry of a *nolle prosequi* on each of the remaining charges. The State agreed to recommend 8 years Level 5 to be suspended after 18 months for Level 3 probation. By entering this negotiated plea agreement, you avoided facing a 2-year minimum mandatory sentence for Trafficking. Thus, your attorney filed a motion on the grounds you now raise, and simultaneously negotiated a beneficial plea offer, which you accepted. You were effectively represented throughout these proceedings.

You also argue that defense counsel failed to inform you about possible deportation as a result of your guilty plea to a felony. The transcript of the plea colloquy shows that your attorney had so informed you, along with the fact that you could be sent to the detention center in Pennsylvania. I reiterated to you that by pleading guilty to a felony charge you were making yourself deportable, and you agreed. You have not shown that counsel failed to inform you about deportation, or that you would have proceeded to trial but for his conduct.

Regarding the traffic stop, as a passenger in Tykie Hill's Mercury Sable, you had no expectation of privacy in the vehicle and therefore have no standing to assert a Fourth Amendment violation with respect to the search of the car.²

You argue that Hill's car should have been impounded. Again, you have no standing to assert this claim, and your attorney was not ineffective for not raising it. In the same vein, you question who picked up the car. You have no standing to make this claim, although the record shows that the police secured the car in a nearby parking lot after it was moved there by one of Hill's friends at his request. Counsel was not ineffective for failing to raise these issues.

In sum, you were indicted on one count each of Trafficking in Cocaine 10g–50g, Possession with Intent to Deliver Cocaine, Possession of Marijuana and Possession of

²*State v. Mills*, 2006 WL 2270857 (Del. Super. 2006)(citing *United States v. Payne*, 447 U.S. 727 (1978); *Jarvis v. State*, 600 A.2d 38 (Del. 1991)).

Drug Paraphernalia. The State's first offer was to plead to trafficking, the lead charge. Your attorney filed a motion to suppress and, at the same time, negotiated a plea to Possession with Intent to Deliver Cocaine with an advantageous sentencing recommendation by the State. Your attorney informed you of the collateral effects of pleading to a felony, that is, loss of your driver's license for three years and possible deportation. You acknowledged these facts, as well as satisfaction with your attorney during the plea colloquy.

Earlier in the proceedings, you had the opportunity to raise these issues, but you chose to plead guilty. Your plea was voluntarily made, and you have not shown that but for counsel's conduct you would have insisted on going to trial. You received effective representation throughout the proceedings.

Your motion for appointment of counsel, an evidentiary hearing and withdrawal of your guilty plea is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

Original to Prothonotary

cc: John W. Donahue, Esquire
William M. Chasanov, Esquire